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MICHIGAN TOWNSHIPS ASSOCIATION

MICHIGAN MUNICIPAL LEAGUE

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MICHIGAN ASSOCIATION OF COUNTIES

OBJECTIONS TO SECTION 252 IN HOUSE BILL 5237

After careful review of House Bill 5237, the Michigan Association of Counties, Michigan Municipal Electric Association, Michigan Municipal League, and Michigan Townships Association believe that citizens, educational institutions, hospitals, and businesses should continue to have the authority to request that their local unit of government provide them with necessary high speed and wireless internet services. We also believe that House Bill 5237 would have dangerous implications for job creation and economic development in local communities. We therefore urge you to strike Section 252 from the bill.

POLICY OBJECTIONS TO SECTION 252:

1. **Section 252 is unwarranted because local voters are capable of determining which services they want their local government to provide.**

2 **Section 252 would interfere with the ability of local governments to achieve essential community goals, such as job creation and economic development.**

3. Section 252 would cut off the means of access to internet to those who live in underserved areas, primarily rural businesses and residents and low income urban areas.

4. Section 252 is unnecessary as the recently passed METRO Act adequately protects the interests of private sector providers. (Broadband Fair Play Section)

5. Section 252 is inconsistent with President Bush's stated broadband goals.

6. Section 252 is inconsistent with trends before Congress.

7. Section 252 is inconsistent with trends across America.

8. Section 252 is inconsistent with numerous state-owned and operated public telecommunications systems, including the State House of Representatives.

PROBLEMS WITH IMPLEMENTATION OF SECTION 252:

1. Section 252 may cost Michigan millions in federal money designed to encourage broadband development.

2. Section 252 bidding process scheme would stall job creation and local economic development for years.

3. Section 252 subverts public safety by limiting an exemption to interoperability to emergency services only.

4. Section 252 undermines local government collaboration, interoperability, and attempts at good stewardship of public monies through shared data systems

5. Section 252 mandates that local governments accept a bid, even if the bidder is a known bad actor, or not even able to provide the service that was bid out.

6. Section 252 is inconsistent with governmental bidding processes, and procurement practices.

7. "Provide" is an unclear term and must be changed in light of the many different ways communities are offering services either by themselves or through partnerships with other communities and/or private providers.

8. Section 252 (A) mandates the use of an unknown term for the bidding process.

9. Section 252 calls for ineffective and inefficient government.

10. Section 252 grandfathers only existing telecommunication services to only existing customers. This would result in systems currently operating to go out of business in a few years.

OBJECTIONS TO SECTION 252 IN HOUSE BILL 5237

POLICY OBJECTIONS TO SECTION 252:

1. **Section 252 is unwarranted because local voters should be able to determine which services they want their local government to provide.**

The quintessential reason for the existence of local governments is to provide essential services to their residents. These essential services create sustainable communities that provide a high quality of life, and an environment in which businesses and residents can prosper. Furthermore, Michigan is a Home Rule state and local voters should not be told by the state what essential services their local governments can, or can not provide.

2. **Section 252 would interfere with the ability of local government to achieve essential community goals, such as job creation and economic development.**

Like electricity a century ago, advanced communications services and capabilities have rapidly gone from a novelty, to a luxury, to an increasingly essential service of modern life. As municipalities across the world have come to realize, communities that have advanced communications systems will be winners in the global marketplace, and those that do not will fall behind and struggle to survive. As a result, municipalities across America, including many in Michigan, have begun to develop their own systems, alone or with strategic private partners, not for the purpose of competing with the private sector in the provision of these services, but because they believe that advanced systems will enable them to achieve critical community goals. These community goals include:

- Stimulating robust economic development, by attracting high technology businesses and jobs and supporting the growth of existing businesses
- Spurring urban core revitalization
- Providing lifetime educational and occupational opportunities
- Enhancing public safety and homeland security
- Mitigating the "digital divide" between wealthy and low-income residents
- Improving government service and lowering government costs
- Through telework, decreasing traffic congestion and pollution, saving workers substantial amounts of money in this era of $3.00 plus gasoline prices, and increasing family communication and harmony
- Through telemedicine, making modern health care accessible to as many residents as possible
- Supporting cultural enrichment
- Promoting all of the many factors that go into a high quality of life.

Of these community goals, stimulating job creation and economic development is particularly important for municipalities across Michigan. With Michigan's economy transitioning from a manufacturing economy to a tech-based economy this issue is particularly critical. In Michigan, Grand Rapids, Oakland County, Washtenaw County, Ottawa County, Holland, Marquette, Coldwater, Wyandotte, Norway, Traverse City are only a few communities either operating, or considering, operating their own system. These communities have been requested by businesses,

hospitals, educational institutions, and residents to provide this service. Four recent economic studies have confirmed that municipal broadband investments can have tremendous positive effects on economic development, and that public investment in broadband networks stimulates, rather than drives out, private telecommunications investment. These studies are available at www.baller.com/comm_broadband.html.

Furthermore, the following are seven examples, from other states competing against Michigan, from among the dozens that we could cite showing a direct link between municipal broadband and economic development:

> ***Norway, MI*** At the request of its businesses and residents, Norway installed cable television. The basic system was installed due to the topographic limitations of the community. The City, at the request of the citizens, installed a antenna on City owned property which was located on the top of one of the hills. The City then ran the necessary coaxial cable to the residents. There were no private companies willing to move into Norway to provide this service. Five years ago, at the request of our residents, the City invested to provide our residents with high speed internet. The only internet service available to the residents was through telephone connection. The local private cable television company who offered high speed internet (Charter Communications - Iron Mountain) was offered an opportunity to use the City's cable system to provide this service. They declined unless the city sell out our entire CATV system. The City of Norway decided to install the necessary equipment ourselves and to provide this service to our residents.
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> ***Tacoma, WA*** As reported in *Site Selection Online*, "Connectivity is the key to Tacoma's recent business growth. More than 100 high-tech companies have set up shop in the South Puget Sound city in Washington since the launch of the city-owned and operated Click! Network."[1] In an extensive interview in *Business Facilities Location Advisor*, the president of one of these businesses confirms that the decisive factor in the company's decision to locate in Tacoma was Click!'s ability to provide the fiber that the company required.[2]
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> ***Bristol, VA*** In Bristol, VA, a city of 17,200 on the border of Virginia and Tennessee, the City's FTTH system is the "main attraction" for economic development. For example, Cross Stone Products, a maker of decorative metal containers, moved its 30-employee operation to the Virginia side of Bristol two years ago in part to get access to the high-speed network. "When we made that decision we were involved quite heavily with some major retailers in the United States," says Larry Bays, company controller. According to Jim Kelley, VP of Operations for Bristol's OptiNet system, this is a common occurrence. "Businesses are always looking for high-speed, high capacity Internet access at competitive prices."[3]
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> ***The Dalles, OR*** The Dalles, a city of 11,873 in the picturesque Columbia River Gorge, operates a 17-mile municipal fiber optic network. In 2004, The Dalles received $200,000 in federal economic development and infrastructure funds to complete the network and connect it to NOANet (Northwest Open Access Network), a cooperative that uses fiber owned by the Bonneville Power Administration to operate a statewide telecommunications network linking schools, hospitals,

government agencies and businesses. The Dalles project was viewed as "laying the technical foundation needed to promote economic growth in Wasco County."[4] As a direct result of The Dalles's municipal networking capabilities, Google in 2005 decided to purchase an industrial site in The Dalles for $1.87 million, to house high-tech equipment that would be connected to the rest of the company's network. In doing so, Google "is expected to bring to the Columbia River Gorge community between 50 and 100 jobs paying an average of $60,000 annually in wages and benefits, twice the county's average income."[5]

Danville, VA Unlike The Dalles, Danville, VA, did not have a fiber network when a major company came looking for a site. As a result, AOL struck Danville off its list of sites for a new data center and located the center in Prince William County, VA. That opened the eyes of Danville's city officials and spurred them to develop a fiber project in the City.[6] Danville's experience is particularly noteworthy because business location specialists now treat access to advanced telecommunications network as an essential, but not sufficient criterion in evaluating potential sites.[7] In other words, having an advanced telecommunications network will not guarantee that a business will move to or stay in a community, but not having such a system will for many communities guarantee that they are passed over for private investment.

Scottsburg, IN Scottsburg, IN, a city of 6000 residents 29 miles north of Louisville, KY, could not get broadband from Verizon. When two important businesses – an automotive repair shop and a medical transcription service – threatened to leave unless they could obtain broadband connectivity, the municipal electric utility stepped forward to provide wireless broadband throughout the town. The town retained the two businesses and is now also saving thousands of dollars a month in telecommunications costs.[8]

Auburn, IN Auburn's story is similar to Scottsburg's, except that Auburn used fiber rather than wireless to achieve its economic development goal. Cooper-Standard Automotive was going to move 75 high-tech jobs out of this small Indiana town because no private company was willing to provide broadband in the town. The mayor and municipal electric utility offered to furnish Cooper "industrial strength connectivity" through fiber optics. Cooper accepted and stayed.[9]

Northeast FL As reported in the Jacksonville *Business Journal*, rural areas in Northeast Florida are suffering from lack of broadband access. "For economic development officials in Nassau, Clay and St. Johns counties, the lack of broadband service threatens to close off efforts to bring in the kinds of companies that create desirable upscale jobs. Nassau County has already lost some high-tech prospects as a result of broadband's narrow reach. 'It's become one of the most important infrastructure needs for companies of any kind, as much so for existing companies as those you're trying to attract,' said Ken Willette, executive director of the Nassau County Economic Development Board. .. . 'If we're not aggressive with it, our fear as a small county is that we'll fall behind,' Willette said. 'That would be devastating to our existing business base and future growth.'"

> In the meanwhile, "BellSouth . . . uses a model that takes into account 52 factors, including such variables as technology purchases and the number of children in the area, to decide if it will spend money to provide broadband access. 'We go where the fish are biting,' said Rich Wonders, senior director of broadband marketing at BellSouth. 'It's about getting the best return on our capital.'"[10]

3. Section 252 would cut off the means of access to internet to those who live in underserved areas, primarily rural businesses and residents and low income urban areas.

Private providers have a limited amount of money, and they must go to the places where demand drives the market. Consequently, many areas of rural Michigan have been left with either no service or are underserved. Local communities need to be able to fill these service gaps and provide access to those who are underserved.

4. Section 252 is unnecessary as the recently passed METRO Act adequately protects the interests of private sector providers. (Broadband Fair Play Section)

The Michigan Legislature extensively debated this issue in 2002 and reached a consensus that worked for all concerned. The METRO Act (PA 48 of 2002) contains tough, yet reasonable, requirements of a municipality should it decide to provide telecommunication services to local citizens, schools, and businesses. These requirements are similar to those provisions contained in Section 409 of the U.S. House Energy and Commerce Committee bipartisan staff discussion draft.

According to Section 14 of the METRO Act, a municipality must meet the following requirements when providing communication services to a residential or commercial premise:

- Hold public hearings
- Perform a cost benefit analysis
- Develop appropriate accounting records
- Not subsidize the communication service, and
- Treat private providers in the same manner as they treat themselves

5. Section 252 is inconsistent with President Bush's broadband goals.

President Bush observed that municipalities have an important role to play in restoring America's global ranking. Speaking of the new municipal wireless system in Spokane, Washington, President Bush observed:

> Cities are [taking advantage of broadband technology.] Spokane, Washington, yesterday established a wi-fi hot zone that allows users within a hundred block area of the city to obtain wireless broadband access. Imagine if you're the head of a chamber of commerce of a city, and you say, 'Gosh, our city is a great place to do business or to find work. We're setting up a wi-fi hot zone, which means our citizens are more likely to be more productive than the citizens from a neighboring community. It's a great opportunity . . . [T]his is a very exciting opportunity.[11]

6. Section 252 is inconsistent with trends before Congress.

At the federal level, support is growing for federal legislation that would protect municipalities from state barriers to entry, such as Section 252. One such bill is the bi-partisan S.1294, which is co-sponsored by Senators Frank Lautenberg (D-NJ) and John McCain (R-AZ), which would bar states from erecting barriers to municipal entry, while providing certain safeguards to protect the private sector. Similarly, in the House of Representatives two weeks ago, key staffers for Representatives Joe Barton (R-TX), John Dingell (D-MI), and Fred Upton (R-MI) circulated a draft bill that would comprehensively reform our national telecommunications laws. Section 409 of the draft bill would preclude states from interfering with the ability of municipalities to develop and deploy broadband services, including broadband video services:

> Neither the 1934 Act ***nor any State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting*** any public provider of [broadband internet transmission services], [Voice over Internet Protocol] services, or broadband video services from providing such services to any person or entity.

The draft House bill also provides for certain safeguards to protect the private sector from potential municipal abuses.

If enacted, the Lautenberg-McCain bill or the House draft bill would arguably preempt Section 252.

7. Section 252 is inconsistent with trends across America.

In 2005, fourteen states have considered barriers to public entry into the communications field. Of these states, twelve have completed their sessions for the year. Of the twelve, only one – Nebraska – enacted a significant new barrier to entry, and it already had a significant barrier on its books. In the eleven remaining states, broad cross-sections of the public, national associations, consumer groups, and organizations representing thousands of American corporations rose up to convince state legislators that barriers to community broadband initiatives are not only bad for the communities involved, but bad for the private sector, which will benefit greatly from ubiquitous affordable broadband.

8. Section 252 in inconsistent with numerous state owned and operated public telecommunications systems, including the State House of Representatives.

The state of Michigan has numerous state-owned and operated telecommunications systems that are competing against the private sector. Why should state governments not have to conform with Section 252. For example, the State House of Representatives owns and operates its own wi-fi internet system in which any member of the public may utilize. This is inconsistent with the intent of Section 252.

PROBLEMS WITH IMPLEMENTATION OF SECTION 252:

1. **Section 252 may cost Michigan millions in federal money designed to encourage broadband development.**

The Federal Communications Commission and USDA – Rural Development have been giving grants to local governments and businesses to assist the local business's and residents to have greater access to this essential service. If Section 252 were implemented, local governments and local business could not compete against other states for these grants because the Section 252 bidding process would create substantial uncertainty and ultimately delay these grant applications. This uncertainty and delay would make Michigan uncompetitive for such grants.

2. **Section 252 bidding process scheme would stall job creation and local economic development for years.**

Local governments build these broadband systems for economic development at the request of local businesses or local chambers of commerce. Under Section 252, local governments cannot provide or facilitate the provision of essential high-speed or wireless internet services until it has completed the public bidding process prescribed in the bill and waited for the private sector to begin providing the services. Under the statutory scheme in Section 252, in which numerous bidders could protract the process, economic development could be stalled from 15 months, to many years. In today's uncertain economy, Michigan does not need this barrier to economic prosperity.

3. **Section 252 subverts public safety by limiting an exemption to interoperability to emergency services only.**

Emergencies are not the only times when local units need to discuss emergency services and increase interoperability. Local units contract with each other to provide services such as LEIN access, CLEMIS access, court records, and other data services related to public safety, but not necessarily considered emergency service. The state should not hamper interoperability and shared systems at a time when the Katrina debacle has freshly reminded us of the importance of agencies to talk to each other.

4. **Section 252 undermines local government collaboration, interoperability, and attempts at good stewardship of public monies through shared data systems**

Many local units contract and collaborate with each other for data systems that are of mutual necessity in order to save costs. This language would require local units to undergo an extensive bid process before being able to even contract with each other for basic governmental data services.

5. **Section 252 mandates that local governments accept a bid, even if the bidder is a known bad actor, or not even able to provide the service that was bid out.**

While business and economic development waits years for this cumbersome Section 252 process, bad actors could stall job creation by simply not following through with their bid contract. There is no penalty against a bidder who does not comply with contract terms.

6. Section 252 is inconsistent with governmental bidding processes, and procurement practices.

The bidding process described in Section 252 is not employed by any Michigan local government. At a time in which the local governments are being asked to be more effective and efficient in delivery of services and purchasing, this bidding process creates more vagueness and ambiguity around a practice that local governments are trying to streamline.

7. "Provide" is an unclear term and must be changed in light of the many different ways communities are offering services either by themselves or through partnerships with other communities and/or private providers.

Communities must be allowed the opportunity to collaborate with each other and with private companies to offer these services to their constituents. A clear understanding of what "provide" means is necessary to determine how this section applies to those who intend to own, operate, contract for, arrange for, or otherwise deliver service to the community.

8. Section 252 (A) mandates the use of an unknown term for the bidding process.

Section 252 (A) mandates the public entity issue a "reasonable request" for bids to provide telecommunication services. What is a "reasonable" request for bids? Usually, these types of legal vague terms ends up with disputes settled in court. Court actions will even further delay getting this essential service to business's and residents.

9. Section 252 calls for ineffective and inefficient government.

The legislature has been calling on local governments to be more effective and efficient in the delivery of services to the public. The legislature has also requested that local governments consolidate services and work with each other to provide essential services. Section 252 contradicts the legislature's call for these efficiencies by not allowing local governments to partner with each other to provide services outside of their corporate boundaries. Local governments have been providing essential services such as electricity, sewer, drinking water, roads, etc. to residents inside and outside of their boundaries for an approximately 100 years.

10. Section 252 grandfathers only existing telecommunication services to only existing customers. This would result in currently operating systems to go out of business in a few years.

Section 252 grandfathers only existing telecommunication services to only those existing customers. If a local unit of government were to upgrade its telecommunications technology, increase the service area, or to increase the number of customers it would have to go through this Section 252 bidding scheme. If a private bidder were to stall the Section 252 bidding processes as discussed previously, the grandfathered local government telecommunication provider would die a slow death by being stripped of the ability to keep up with changing technology. If Section 252 puts current local government telecommunication providers out of business, local taxpayer will be the big loser because they will not be receiving in exchange any service for they helped finance.